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RECENT DECISIONS

DOUGLAS H. KENYON, *Editor-in-Charge*
LIONEL S. POPKIN, *Associate Editor*

ADMIRALTY—SEAMEN—EXTRATERRITORIAL EFFECT OF THE SEAMEN'S ACT.—A British seaman who had shipped at Liverpool on a British vessel and whose demand for one half of the wages so far earned by him, made after arrival in American waters, had been denied, libelled the vessel in an American port for the entire amount earned, which amount he claimed under the provisions of the Seaman's Act of 1915. 38 Stat. §§ 1164, 1165, U. S. Comp. Stat. 1916, § 322. The British rule, which barred a seaman's claim for wages until the completion of the voyage, was urged upon the court by the claimant. *Held*, the libellant could recover. *Strathearn Steamship Co., Ltd. v. Dillon* (U. S. Supreme Court, Oct. Term, 1919, No. 373, March 29, 1920) not yet reported, affirming (C. C. A. 1919) 256 Fed. 631.

The court construed the provision applying the section to "seamen on foreign vessels while in the harbors of the United States" as controlling, and distinguished the instant case from *Sandberg v. McDonald* (1918) 248 U. S. 185, 39 Sup. Ct. 84, on the basis of statutory construction. For a full discussion of the principal case in the Circuit Court of Appeals see 20 Columbia Law Rev. 207.

ALIMONY—SERVICE BY PUBLICATION—PROCEEDINGS AGAINST NON-RESIDENT HUSBAND FOR SEPARATE MAINTENANCE.—The plaintiff wife brought suit against her husband, a non-resident who was served by publication, for separate support and maintenance without a divorce. She prayed that a resident trustee, who was garnished and made a defendant, be directed to make payment from the income of trust property within the state, the husband being the beneficiary of the trust. The husband defaulted but the trustee answered, and upon a decree being entered granting the relief prayed for, the trustee appealed. *Held*, judgment affirmed. *Shipley v. Shipley* (Iowa 1919) 175 N. W. 51.

A decree for alimony in a divorce action is generally regarded as *in personam*. *Chapman v. Chapman* (1917) 269 Mo. 663, 192 S. W. 448; *Bunnell v. Bunnell* (1885) 25 Fed. 214. However, a distinction has been drawn in a few cases between suits for alimony and suits for separate maintenance without divorce. In the latter the marriage bond still exists and the award of separate maintenance is said to be merely the readjustment or alteration of that complex aggregate of legal relations commonly called the marital status. Hence a suit for separate maintenance without divorce, where the complaint describes specific local property belonging to the non-resident husband, out of which alimony is prayed, is said to be *in rem*, and no seizure of the property proceeded against is required. *Hanscom v. Hanscom* (1895) 6 Colo. App. 97, 39 Pac. 885; *Benner v. Benner* (1900) 63 Oh. St. 220, 58 N. E. 569; but see *McGuinness v. McGuinness* (1908) 72 N. J. Eq. 381, 68 Atl. 768; *Elvins v. Elvins* (1913) 176 Mo. App. 645, 159 S. W. 746. Moreover, by regarding actions for separate maintenance or even alimony in general, as seeking relief *in rem*, one can readily interpret the constructive service statutes to cover such cases under

their divorce or lien and property provisions, without requiring a specific provision carefully including alimony proceedings within its scope. *Rhoades v. Rhoades* (1907) 78 Neb. 495, 111 N. W. 122; *Goore v. Goore* (1901) 24 Wash. 139, 63 Pac. 1092. Although the facts of the instant case showed that the trustee was duly served with notice of garnishment, which was all the "seizure" possible in this case, the court regarded that as a purely precautionary measure since the proceeding was already *in rem*. Cf. *Pennington v. Fourth Natl. Bank* (1917) 243 U. S. 269, 37 Sup. Ct. 282. This theory of the nature of separate maintenance and possibly all alimony actions, has been created by courts to meet the just requirements of marital problems, and has the merit of preventing a guilty husband from escaping his family obligations.

ANIMALS—DEFENCE OF PROPERTY—RELATIVE VALUES.—The defendant killed the plaintiff's pedigree dog while it was attacking the defendant's guinea hens on his land. *Held*, it was proper for the jury to consider the relative values of the dog and the hens, as they reasonably appeared to the defendant, in determining whether or not the killing was justifiable. *Ex parte Minor* (Ala. 1919) 83 So. 475.

Although it may be necessary for the owner of land to kill a trespassing animal to save his property, his privilege to kill is qualified in jurisdictions which allow the jury to consider the relative values of the property destroyed and protected in determining the reasonableness of the killing. See *Anderson v. Smith* (1880) 7 Ill. App. 354, 359; *Nesbett v. Wilbur* (1900) 177 Mass. 200, 201, 58 N. E. 586; *McChesney v. Wilson* (1903) 132 Mich. 252, 257, 93 N. W. 627. In other jurisdictions, the privilege to kill is unaffected by relative values, and evidence relating thereto is excluded. *Simmonds v. Holmes* (1891) 61 Conn. 1, 23 Atl. 702; *Collinson v. Wier* (1915) 91 Misc. 501, 154 N. Y. Supp. 951; see *Aldrich v. Wright* (1873) 53 N. H. 398, 408. The first view seems unsound in that it compels the defendant to ascertain at his peril the relative values at a time when he must act quickly if at all. The second view fails to recognize that since the social interest frequently outweighs the individual interest, the privilege of defence of property should be accompanied by a liability to be defeated where its exercise would result in an appreciable diminution of wealth to society. In the light of these considerations, the intermediate view taken by the principal case, that relative values are only material when the defendant knew, or, as a reasonable man, ought to have known that the property destroyed was worth more than that saved, seems to be the fairest.

ATTORNEY AND CLIENT—PRIORITY OF ATTORNEY'S LIEN OVER SET-OFF—NEW YORK.—The plaintiffs purchased an assignment of a judgment debt from a third party which they sought to set-off against a judgment previously entered against them by the defendants. The attorneys for the latter objected, claiming that their lien upon their client's judgment was superior. *Held*, the set-off should be granted but subject to the attorney's lien. *Beecher v. Vogt Mfg. Co.* (1920) 227 N. Y. 468, 125 N. E. 831.

The controversy as to the relative superiority of the attorney's lien and the adverse party's right of set-off has resulted in a mass of conflicting decisions incapable of reconciliation. In New York, after a sharp conflict between the decisions of Chancellors Kent and Walworth, the superiority of the right of set-off, espoused by Chancellor Kent, pre-